


STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: May 8, 2023

AGENCY: DHS

FH #: 8602834Q

In the Matter of the Appeal of	:
	: DECISION
	AFTER
	: FAIR
	HEARING
from a determination by the New York City	:
Department of Social Services	:

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on May 10, 2023, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Agency appearance waived by the Office of Administrative Hearings

ISSUE

Was the Agency's determination to deny the Appellant's application for Temporary Housing Assistance on the grounds that the Appellant had other housing available correct?

FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, age 63, applied for temporary housing assistance with two minor children, ages 14 and 12.
2. The Agency denied the Appellant's application for Temporary Housing Assistance on the grounds that the Appellant has other housing available.

3. On May 8, 2023, the Appellant requested this fair hearing.

APPLICABLE LAW

As a condition of eligibility for temporary housing assistance, individuals and families must comply with the requirements of this subdivision. Temporary housing assistance will be denied or discontinued under the conditions specified below. Temporary housing assistance will not be denied or discontinued for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member. 18 NYCRR 352.35(c).

An individual or family must cooperate in and complete an assessment conducted by the social services district. When an individual or family fails to cooperate in and complete the assessment, the social services district must deny the individual's or family's application for temporary housing assistance. 18 NYCRR 352.35(c)(1).

An individual or family must cooperate with the social services district in developing, carrying out and completing an independent living plan, if the social services district, based on its assessment of the individual or family, has determined that such a plan will assist such individual or family to relocate to housing other than temporary housing. When an individual or family unreasonably fails to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance. When an individual or family unreasonably fails two or more times to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance and the individual or family is disqualified from receiving temporary housing assistance until the failure ceases, or for 30 days, whichever period of time is longer. 18 NYCRR 352.35(c)(2).

An individual or family must actively seek housing other than temporary housing, as required by the social services district, and not unreasonably refuse or fail to accept any such housing, including but not limited to, permanent housing, reunification with family or relocation to other appropriate residential facility. When an individual or family fails to comply with these requirements, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer. 18 NYCRR 352.35(c)(3).

An individual or family must refrain from engaging in acts which endanger the health or safety of oneself or others, or which substantially and repeatedly interfere with the orderly operation of a temporary housing facility. When an individual or family commits such acts, including but not limited to acts of violence, selling drugs, or repeated violations of the rules of a temporary housing facility, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer. 18 NYCRR 353.35(c)(4).

Prior to denying or discontinuing temporary housing assistance pursuant to subdivision (c) of this section, the social services district must evaluate the individual's or the family's need for protective services for adults, preventive services for children and protective services for

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children and, if necessary, make an appropriate referral. 18 NYCRR 352.35(d).

A social services district must deny or discontinue a person's or family's temporary housing assistance if it determines that the person or family has other housing available, or if it determines, consistent with the regulations in this Title, that the person or family is required to, but is not applying income and/or using available resources to reduce or eliminate the need for temporary housing assistance. 18 NYCRR 352.35(g).

Administrative Directive 94 ADM-20, dated December 29, 1994, requires local districts to provide services and assistance to prevent homelessness and to meet temporary housing and other immediate needs of eligible homeless persons. Districts must have procedures to: (a) ensure that emergency needs of homeless persons are evaluated and that homeless persons are advised of their rights to emergency and ongoing assistance; (b) permit persons who are in danger of becoming homeless to notify the district of such danger and to seek the assistance of the district in avoiding homelessness; (c) ensure that homeless persons or persons in danger of becoming homeless can apply for temporary housing whenever such housing is needed; (d) identify and, where appropriate, meet the immediate food and other immediate health and safety needs of eligible homeless persons; (e) provide Medical Assistance (MA) to otherwise eligible homeless persons; and (f) provide temporary housing assistance as soon as possible to eligible homeless persons who have no other available temporary or permanent housing. Pursuant to this ADM, the district must make reasonable efforts to determine the applicant's eligibility prior to providing temporary housing assistance. It is the expectation that assistance will be provided within 48 hours of application for such assistance.

With respect to the provision of temporary housing, the ADM indicates that persons who resided in housing immediately prior to requesting such temporary housing assistance and who were not made homeless as a result of a legal eviction or an emergency such as a fire, flood or other condition which rendered the premises uninhabitable are not presumed to be in immediate need of assistance. In these cases, the district must make every reasonable effort to verify the applicant's eligibility for assistance and is obligated to provide temporary housing assistance only upon verification that other temporary or permanent housing is not available. When placing persons in temporary housing or when transferring persons between temporary housing accommodations, a district must attempt, but is not required, to make placements within these persons' community, giving consideration to the children's educational needs, employment needs, medical needs and child care needs.

A district must meet emergency needs of eligible persons and determine, based upon the particular circumstances, the most appropriate temporary housing assistance for such persons. Homeless persons do not have the right to choose their own temporary placements. The overriding concern is the district's efforts to locate, secure and pay for housing which meets basic standards of health and safety, as set forth in applicable Department regulations. When the district determines that a particular temporary housing placement is appropriate, the homeless person must accept the placement unless, in the district's judgment, he or she has good cause for refusing to do so. It may be good cause if the homeless person would be unable to participate in medical, alcohol or drug treatment or in employment or training because of a transportation

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hardship created by the location of the temporary housing placement.

Section 352.35(g) of the Regulations provides that the Agency must deny a person's or family's Temporary Housing Assistance if it determines that the person or family has other housing available.

The Agency must determine if the applicant has an available housing resource. This resource must be actually available. A housing resource is defined as available when it is within the control or ability of the applicant/re-applicant to live at the residence or when the applicant has permission from the owner, tenant, landlord or other party responsible for the resident to live there. Applicants for Temporary Housing Assistance claiming they do not have control or permission must support those claims with clear, convincing and credible evidence.

A housing resource should not be considered available if after an investigation it is found that the primary tenant who is not a legally responsible relative of the applicant provides a reasonable justification to decline to allow the applicant to return to the residence. A "reasonable justification" shall be determined on a totality of factors which may include the relationship of the primary tenant to the applicant, the length of stay of the applicant at the residence, the reason for the primary tenant declining permission to return to the residence, and any potential hardships in permitting the applicant to return to the residence. A housing resource may not be considered available if it requires a primary tenant or leaseholder, who is not a legally responsible relative, to seek permission from a lessor for the residency of the applicant, and such permission has been rejected, or would not be granted. However, if there is a possibility or procedure to procure permission from a lessor to reside at the housing resource, the fact that the primary tenant has not yet requested such permission does not mean that the housing resource is unavailable. Refusal by a primary tenant or leaseholder to seek permission where clear, convincing and credible evidence exists that such permission would be granted does not make the housing resource unavailable. Finally, a housing resource should not be considered available if the residency of the applicant would violate lease provisions or otherwise be considered illegal, even if the applicant had previously resided in the resource. 16-ADM-11.

Section 352.35(h) of the Regulations provides that any individual or family whose application for Temporary Housing Assistance is denied pursuant to subdivision (c) or (g) of this section, is entitled to a fair hearing, in accordance with subpart 358-3 of this Title.

It shall be unlawful for a landlord to restrict occupancy of residential premises, by express lease terms or otherwise, to a tenant or tenants or to such tenants and immediately family; such a lease restriction shall be unenforceable as against public policy. Any lease agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence. Any person aggrieved by a violation of the above may maintain an action in any court of competent jurisdiction for: (a) an injunction to enjoin and restrain such unlawful practice; (b) actual damages sustained as a result of such unlawful practice; and (c) court costs. Real Property Law, Section 235-f; this does not apply to residences in New York City Housing Authority

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buildings.

DISCUSSION

The hearing record establishes that the Appellant, age 63, applied for temporary housing assistance with two minor children, ages 14 and 12. The Agency denied the Appellant's application for Temporary Housing Assistance on the grounds that the Appellant has other housing available.

The Agency contends that the Appellant has other housing available to her at [REDACTED]. According to the Appellant's statements at the time of application, this location is a three bedroom residence with five occupants, not including the Appellant's two granddaughters.

At the hearing, the Appellant stated that she cannot return to the location because of domestic violence. She stated that her granddaughters, who are applying for shelter with her, were both raped by their step brother, [REDACTED] who resides at the location. She stated that the police were involved but that the charges were dropped. The Appellant provided no evidence of her claims.

The record reflects that the Appellant had reported that she and her granddaughters left because the children were being sexually abused by the lease holder of the apartment. The record also reflects that [REDACTED] does not reside at the recommended housing option but at another address as indicated by the letter written by said person, dated October 3, 2022.

The Guidelines require that Appellant establish valid grounds to support her claim of homelessness. The Appellant's contention that her granddaughters were both raped by [REDACTED] at the recommended housing option is unsupported by the record.

The record establishes that there is adequate space at the recommended housing option to accommodate Appellant's family, at least temporarily, until Appellant can find permanent accommodation which generally is the Appellant's responsibility.

Based on the foregoing, the record supports the Agency's determination as to the viability of the recommended housing option. The Agency's determination is sustained.

DECISION

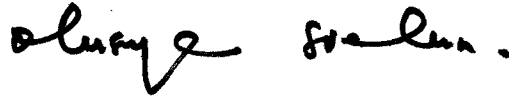
The Agency's determination to deny the Appellant's application for temporary housing assistance is correct.

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DATED: Albany, New York
05/25/2023

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Ally G. Green", is written over a horizontal line.

Commissioner's Designee

Assistance Information

Important notice enclosed. If you need help reading the notice, call 1-800-342-3334.

Aviso importante adjunto: si necesita ayuda para leer este aviso, marque el 1-800-342-3334.

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إخطار هام مرفق. إذا احتجت إلى المساعدة في قراءة الإخطار يرجى الاتصال بالرقم 1-800-342-3334.

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중요한 공지사항이 포함되어 있습니다. 이 공지사항을 읽는데 도움이 필요하시면, 1-800-342-3334로 전화하세요.

Содержит важную информацию. Если при чтении этого извещения у Вас возникнут трудности, позвоните по телефону 1-800-342-3334.

Kèm theo là thông báo quan trọng. Nếu quý vị cần giúp đọc thông báo này, hãy gọi 1-800-342-3334.

ביגעל"גט א וויכטיקע מעלדונג. אויב איר דארפט הילף ביים לייענען די מעלדונג, קלינגט אן 1-800-342-3334.

Avviso importante incluso. Se ha bisogno di aiuto per leggere l'avviso, contatti il numero 1-800-342-3334.

Ważna informacja w załączeniu. Jeśli potrzebujesz pomocy w przeczytaniu tej informacji, zadzwoń pod numer 1-800-342-3334.

اہم نوٹس منسلک ہے۔ اگر آپ کو نوٹس پڑھنے میں مدد چاہیے تو 1-800-342-3334 پر کال کریں۔